

Before the

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Comments on Implementation of SREA

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Metal Management, Inc., (MMI) is pleased to have this opportunity to offer its comments on implementation of the Superfund Recycling Equity Act. MMI is one of the largest and fastest growing full-service metals recyclers in the United States, with approximately 50 recycling facilities in 14 states. For the year ended March 31, 2000, MMI sold approximately 5.3 million tons of ferrous scrap and approximately 656.8 million pounds of non-ferrous scrap metal. Our operations consist primarily of the collection and processing of ferrous and non-ferrous metals for resale to metals brokers, steel producers, and producers and processors of other metals. Our ferrous products mainly include shredded, sheared, hot briquetted, cold briquetted or bundled scrap and other purchased scrap metal such as turnings, cast and broken furnace iron. MMI also processes non-ferrous aluminum, copper, stainless steel, brass, titanium and high temperature alloys.

According to government sources, total revenues generated in the scrap metals recycling industry in 1995 were approximately \$20 billion. The scrap metal industry is comprised of more than 3,000 independent metals recyclers. Many of these companies are family-owned and operate only in local or regional markets. Due to its low price-to-weight ratio, raw ferrous scrap is generally purchased locally from industrial companies, demolition firms, junkyards, railroads, the military, other scrap dealers and various other sources. The most significant limitation on the size of the geographic market for ferrous scrap is the transportation cost for the raw or processed scrap. The geographic markets for non-ferrous scrap tend to be larger than those for ferrous scrap due to the higher selling prices of non-ferrous metals, which justify the cost of shipping over greater distances. Non-ferrous is typically sold on a spot basis, either directly or through brokers, to intermediate or end-users, which include smelters, foundries and aluminum sheet and ingot manufacturers.

These observations about the structure of the scrap metals recycling industry and the nature of the markets for ferrous vs. non-ferrous metallic scrap identify features that give rise to MMI's needs in relation

to its implementation of the Superfund Recycling Equity Act. First of all, MMI is small in relation to many of the companies from which it purchases and to which it sells scrap metal. It lacks full-time staff dedicated solely to SREA implementation. Next, MMI is one of thousands of participants. With the range of its products and the geographic dispersion of MMI, it expects it will be faced with conducting SREA inquiries on no less than 500 entities in the course of a year. With the geographic spread of MMI's customer base, it must be able to access data from at least 28 states, over 57 cities and probably as many counties. In order to give effect to the "reasonable care" inquiry required by SREA, MMI needs an administratively manageable method of collecting governmental data, evaluating it and updating it.

Collecting Government Data

It is MMI's belief that the best arrangement is for any metals recycler seeking to satisfy SREA to be able to access commercially available services that provide reports on what appears in federal and state environmental enforcement databases.

Our experience to date with FOIA requests on our own sites is a case in point. MMI has found that the states that are busy enforcing their environmental laws are not equipped to deal with the onslaught of paper shuffling that SREA would otherwise unleash if all entities in the SREA net were to file FOIA requests on each other. Nor is the goal of the law well served by requiring industry to pay for photocopying reams of files that cannot be determined to be relevant until after the copies have been received and reviewed. The advantage to EPA, the environmental community and metals recycling companies is to rely on an information gathering infrastructure that has grown in response to the need to perform real estate due diligence in connection with property transfers. Instead of literally requiring each of the thousands of parties shipping metallic scrap to file individual FOIA requests with government agencies on the thousands of receivers of scrap metal and mandating the inevitable duplication of effort that would ensue, EPA should allow commercially prepared reports derived from government databases to suffice as a "governmental inquiry" under SREA.

Evaluating Government Data

SREA refers to inquiries regarding “the consuming facility’s past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.” Sec. 127 (c) (6) (c). This requirement raises the questions, which environmental provisions are meant and what record constitutes “compliance”.

It can be argued that the scope of environmental provisions SREA intends as its focus includes the Clean Water Act’s NPDES provisions; the Resource Conservation and Recovery Act’s rules governing hazardous waste, solid waste, used oil, battery reclamation and corrective action; the Clean Air Act’s permitting regimen; and the Emergency Planning and Community Right-to-Know Act’s inventory and TRI reporting. The activities regulated by these provisions often fit SREA’s operative language cited above and bear some reasonable relationship to the objectives of the Superfund law that SREA amends. In our opinion, the list should be more limited (e.g., by deleting TRI and the Clean Air Act) to include only those statutes, which if violated, could trigger a Superfund site response associated with handling scrap metal. This list can serve, then, as the industry standard. If EPA’s list is different, it should be revealed now, in the context of implementing SREA, and not withheld for use in challenging companies relying on SREA.

Evaluating the data received from “government inquiries” leads industry down a thorny path. MMI has heard reports from industry concerning how difficult it is to obtain revisions to erroneous information that has been reported in electronically available government environmental databases. Also, we recognize that there is a potential for transcription errors when a commercial vendor reports on data housed elsewhere. We think we can offset these problems by asking the receiver to confirm whether the commercial database results accurately reflect their compliance record. The evaluation question that interests MMI most is what constitutes a good record.

Imagine a situation in which a scrap metal recycler is doing business with three consumers with respect to which a reasonable inquiry is made. The inquiries reveal that three years ago, site A received a Notice of Violation (NOV) because the environmental inspector believed it lacked sufficient secondary containment around a used oil storage tank. The situation was promptly corrected and no further legal

action was taken. Then, a year ago, it received an NOV for failing to make two entries in its repair log, an air permit requirement. For site B, the metal recycler learned, EPA referred a case to the Department of Justice and a civil action involving SPCC training and secondary containment rules has been filed. When asked for more detail over lunch by the scrap recycler, the owner/operator of Site B claims that the site is in compliance and despite the compliance, the owner and EPA have not been able to agree on the penalty. Site C received an NOV for a discharge in violation of its NPDES permit and a second for what appears to be the same type of violation.

Can the scrap metal recycler wishing SREA protection ship to any of these three sites? MMI believes that SREA is intended and best used as a tool to raise the level of environmental performance, and not a commercial ban or blacklisting device. SREA should promote the opportunity for the scrap shipper to write for clarification and explanation. Site visits should be an allowed, but not mandatory, form of follow-up. If each customer inquiring about Sites A, B and C upon receiving the kind of information described were to make direct, written contact with the management of the sites attempting to obtain more information, the pressure for better environmental effort would be felt.

We are regularly visited by companies evaluating MMI's environmental activities. We respond to lengthy written environmental questionnaires and provide site visits. These "inquiries" occurred prior to passage of SREA and can only be expected to increase in number. They are largely subjective evaluations based on a consultant's view of what it means for a scrap recycling company to be in compliance. They are time-consuming and costly to both the visiting and visited companies.

Perhaps for that reason, MMI itself has met with some resistance when trying to do more than make a governmental inquiry. And perhaps, because of the disparity in company size and market power, some very large receivers have been unwilling to share compliance information. MMI believes it would be unfair to withhold SREA benefits from a company that tried but was refused or ignored by a receiver.

Updating Government Data

MMI envisions SREA working as an administratively manageable Superfund measure. With government data provided through a commercial vendor and with the task of reviewing data on as many as 500 entities, MMI believes that updating should occur no more frequently than on an annual basis. To require more frequent inquiries would be wholly disruptive to organized recycling. Again, imagine the scenario in which some evidence of violations is returned. Until further clarification is obtained, the receiver's eligibility to receive could be temporarily suspended. If this were to happen for 30% of one's customers two to four times per year, a company's ability to sell its products could be severely disrupted. And the staff would be doing little else than trying to get follow-up information. Rather, a system of evaluations of MMI's customers no more often than annually, would be a preferred, albeit, an ambitious effort.

Conclusion

MMI would like to avoid seeing SREA being turned into a paper-intensive exercise used to discourage genuine recyclers from achieving Superfund protections. The intention of SREA is to remove an unintended consequence of the Superfund liability model. With a good faith effort to collect information through commercial sources of government environmental compliance databases, MMI should expect to enjoy the benefits of the Superfund Recycling Equity Act.